IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

AKEEM MUHAMMAD,

Appellant,

v.

JAMES CROSBY,

Appellee.
_____/

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

CASE NO. 1D05-0673

Opinion filed November 7, 2005.

An appeal from the Circuit Court for Leon County.
L. Ralph Smith, Judge.

Appellant, pro se.

Charlie Crist, Attorney General, and Tobey Schultz, Assistant Attorney General, Tallahassee, for Appellee.

PER CURIAM.

Inmate Akeem Muhammad appeals the trial court's denial of his petition for writ of mandamus/certiorari, wherein he asked the court to direct appellee, James Crosby, Jr., Secretary of the Department of Corrections (DOC), to refrain from

enforcing a prison rule that requires his face to be clean shaven, which he contends is a substantial burden on his exercise of Islam and thus prohibited by chapter 761, the Religious Freedom Restoration Act of 1998 (RFRA).[1] Muhammad also claims the trial court erred by imposing a lien on his prison trust account in connection with his filing fee in circuit court. We reverse and remand on these two grounds, and affirm the remaining issues without comment.

Section 761.03(1), Florida Statutes (2004), provides that the government "shall not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability." Section 761.02(3), Florida Statutes (2004), defines "exercise of religion" as "an act or refusal to act that is substantially motivated by a religious belief, whether or not the religious exercise is compulsory or central to a larger system of religious belief." See Warner v. City of Boca Raton, 887 So. 2d 1023 Fla. 2004) (holding that forced behavior contrary to a religious belief is a substantial burden on the free exercise of religion). Muhammad is a Muslim and asserts that Islam commands male adherents to wear a beard the size of a fist or the next shorter length possible. Florida Rule of Administrative Procedure 33-602.101, however, requires inmates to be clean-shaven and to submit to forced shaving if they refuse.

[1]We have jurisdiction to review the procedural denial of Muhammad's challenge under chapter 761 by direct appeal. Green v. Moore, 777 So. 2d 425 (Fla. 1st DCA 2000).

After Muhammad refused to shave on religious grounds, he was sentenced to 30 days of disciplinary confinement, forced shaves, and loss of gain time. This discipline was upheld on administrative appeal and Muhammad continues to be subject to forced shaves.

The trial court denied the petition for writ of mandamus for the reason that Muhammad should have made his request in an action for declaratory relief. On the contrary, mandamus is an appropriate vehicle for Muhammad to attempt to show the circuit court that DOC's grooming policy substantially burdens his free exercise of religion in violation of section 761.03. See, e.g., Henderson v. Crosby, 891 So. 2d 1180 (Fla. 2d DCA 2005). See also Schmidt v. Crusoe, 878 So. 2d 361, 363 (Fla. 2003) (observing that when a court must interpret a relatively new statute to determine whether the petitioner has a clear legal right and respondent has a clear legal duty under the statute, this "does not make the right any more or less 'clear'" for purposes of mandamus relief). We direct the circuit court to address the merits of Muhammad's claim under chapter 761.[2] Cf. Mayweathers v. Terhune, 328 F. Supp. 2d 1086 (E.D.

[2]Although the trial court is without jurisdiction to prohibit DOC from cutting Muhammad's beard for religious reasons, because courts are not authorized to regulate treatment of inmates, the court does have jurisdiction to consider his challenge to the validity of DOC's shaving regulation on religious grounds. See Moore v. Habibullah, 739 So. 2d 1281 (Fla. 5th DCA 1999); Singletary v. Duggins, 724 So. 2d 1234 (Fla. 3d DCA 1999).

Cal. 2004) (holding that the California State Prison regulation requiring inmates to be clean-shaven was not the least restrictive means for achieving a compelling governmental interest, and thus violated Muslim inmates' religious rights under the federal counterpart to RFRA).

Turning to the second issue, the lower court declared Muhammad indigent and placed a $280 lien on his prison account to cover the court's filing fee, pursuant to the Prison Indigency Statute, section 57.085(5), Florida Statutes (2004). This was error. Section 57.085(10) specifically provides that the statute "does not apply to a criminal proceeding or a collateral criminal proceeding." The supreme court held in Schmidt v. Crusoe, 878 So. 2d 361 (Fla. 2003), that an inmate's challenge to an action that results in a loss of gain time is a collateral criminal proceeding, because such action effectively lengthens an inmate's sentence. Appellee claims Schmidt does not apply, because Muhammad is serving a life sentence that cannot be shortened. The opinion does not support this construction.

The court stated in Schmidt that the lien requirement was intended to discourage inmates from filing frivolous civil damage suits challenging conditions of confinement, and that nothing in the legislative history showed an intent to apply the law to actions challenging loss of gain time. Id. at 364-65. Muhammad lost gain time

as a consequence of his refusal to shave. Under Schmidt, any challenge to discipline that results in a loss of gain time is a collateral criminal proceeding.

AFFIRMED IN PART, REVERSED IN PART, and REMANDED for further proceedings consistent with this opinion.

ERVIN, BARFIELD and VAN NORTWICK, JJ., CONCUR.